

Exhibit I

SUPREME COURT OF THE STATE OF NEW YORK

COUNTY OF NEW YORK: TRIAL TERM PART 54

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IN RE: THE ESTATE OF YARON UNGAR BY AND THROUGH ITS
ADMINISTRATOR, DAVID S. TRACHMAN, DVIR UNGAR, MINOR, BY HIS
GUARDIANS AND NEXT FRIENDS, YISHAI UNGAR, MINOR, BY HIS
GUARDIANS AND NEXT FRIENDS, PROFESSOR MEIR UNGAR, JUDITH
UNGAR, INDIVIDUALLY AND IN THEIR CAPACITY AS LEGAL GUARDIANS
OF PETITIONERS DVIR UNGAR AND YISHA I. UNGAR, RABBI URI
DASBERG, et al...,

Plaintiffs

- against -

SWISS AMERICAN SECURITIES, INC. et al...,

Defendants
----- X

Index No. 102106 - 2006

May 18, 2006
111 Centre Street
New York, New York 10007

B E F O R E: HON. SHIRLEY WERNER KORNREICH, Justice.

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Lester D. Isaacs,
Official Court Reporter.

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THE COURT: I have four motions in front of me on this case and apparently there is a fifth, that is across the street; am I correct?

MR. KERR: Your Honor, Charles L. Kerr.

If I can lay it out for your Honor. The original return date of the notice of petition on the turnover petition was returnable today.

Our motion to dismiss or summarily dismiss the petition is on today. Plaintiffs motion under CPLR 408 for discovery in the turnover proceeding is on today.

Plaintiffs filed an Order to Show Cause to strike two reply affidavits that we submitted in support of our motion to dismiss.

THE COURT: Right.

MR. KERR: The other two motions that are swirling around here, but are not here before you today.

THE COURT: Right.

MR. KERR: We separately made a motion to vacate the Sheriffs levy under CPLR 5240, and we did that, your Honor, just to cover our bases as we will explain today.

If the Court dismisses the turnover petition,

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Proceedings

as we think they should, the Sheriff's levy will expire and, therefore, that motion will become moot.

In addition, your Honor, we separately, we appeared in the declaratory judgment action and again made a motion to dismiss that action but a protective motion. Our motion was if the turnover proceeding is to go forward, there is no need for the declaratory judgment action.

However, if the court dismisses the turnover petition, as we are asking for today, then that motion also becomes moot, we will withdraw it. And we will answer and we will proceed in a declaratory judgment action. So that is where things are as of today.

THE COURT: And those last two are across the street and not in front of me?

MR. KERR: Yes, we made those two motion on notice of motion in April, on Mr. Tolchin's request. They were put over, they are now returnable June 9.

THE COURT: Across the street?

MR. KERR: Across the street, but again they may booth become moot depending on what the results of all of this is today.

THE COURT: All right. So reading through all of this, what strikes me is, several things in reading the papers.

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Proceedings

First of all, the issue of five year audits in regard to whether there is any surplus or not, and if there is a surplus, then that would go to pay off any debt.

I'm trying to remember now. Yes, I know what it is. First of all, have there been any loans from the PA to the Pension Fund?

MR. KERR: I don't believe there has. I think what your Honor is referring to is under the operative statute.

THE COURT: Right.

MR. KERR: If the Pension Fund, in the course of it, does an audit and there is a short fall it can go to the Palestinian Authority and request funds from the Palestinian Authority to cover that short fall. The Pension Fund out of its investment and the money it collects is obligated to pay that.

THE COURT: Yes.

MR. KERR: I don't believe there is any loans from the PA to the Pension Fund. I must say I have not looked expressly at that. But I'm not aware of any. I know of none. And the money, to be very clear, the money that's at issue here in this turnover proceeding, however, is one piece of the assets there is secrete assets, so the turnover petition only deals

1 Proceedings

2 with the assets located here in New York, which are the
3 securities at SASI. Those securities are the Pension
4 Funds. Mr. Tolchin disagrees, but those are the
5 Pension Fund assets. I think even if there were loans
6 made by the PA to the Pension Fund and the Gaza, that's
7 not at issue here today, but I just don't know.

8 THE COURT: The only reason I asked, I felt
9 it might be an issue because in fact the Pension Fund
10 owes money to the PA and the PA is the judgment debtor,
11 then and if there is a surplus, which would be the fee
12 that would cause them to pay off these loans, then that
13 money maybe attachable.

14 MR. KERR: Let me say this. I don't think
15 there are any such loans. In fact what has happened in
16 the last five years under the statute the both
17 municipalities and the civil administration are
18 obligated, the both, to withhold funds from salaries
19 paid to workers and transfer that money to the Pension
20 Fund. And they are required to then pay another
21 portion of it as well into the Pension Fund.

22 What has happened in fact is the PA has
23 failed to do that. I understand that they have
24 withheld the money from the workers, but it has not
25 paid it into the Pension Fund.

26 THE COURT: Let me ask you something. Are

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Proceedings

you saying from what I call it 10 percent of the workers salary or something like that, goes into the Pension Fund then 12 and a half percent is supposed to come from the government? I'm not sure, I think.

MR. KERR: I believe the way it works, I believe the way it works, there is a portion that's withheld from the salary.

THE COURT: Right.

MR. KERR: Of the employers.

THE COURT: Of the employees.

MR. KERR: Of the employees, excuse me.

And, in addition, the employer whether it's the civil administration, the Moloch municipalities, also have a contribution that they may make.

THE COURT: When you say the money has been taken out from the employees, what has not been put into the Pension Fund, the money taken from the employees or the government's interest.

MR. KERR: It is my understanding both, with the municipalities they have been doing this. I understand have been transferring money to the Pension Fund on a regular basis.

THE COURT: From both their contribution and the employees?

MR. KERR: That's correct. My understanding

1 Proceedings

2 with respect to the PA, this has been a tremendous
3 issue of dispute between the Pension Fund and the PA,
4 is whether the PA has withheld that from the salary of
5 the employees. I'm not 100 percent sure, but I know
6 that the PA has not been transferring those monies to
7 the Pension Fund the way they are supposed to do. In
8 fact the Pension Fund --

9 THE COURT: When you say "those monies"
10 you're talking about the employees, what was withheld
11 are the employees salary or the contributions?

12 MR. KERR: I believe both, your Honor.

13 Therefore, the Pension Fund is one of the
14 biggest creditors of the PA. The PA owes us a
15 tremendous amount of money, that remains outstanding
16 which is a tremendous bone of contention between the
17 Pension Fund and the PA. So again, I don't have all
18 the facts and figures, but I believe it's approximately
19 since approximately 2000, the PA has failed to transfer
20 all of the money. I think they transferred some, but
21 not all the money. Therefore, we in fact stand in line
22 as to claims against the PA.

23 THE COURT: Okay. Before we get any
24 further.

25 In terms of Mr. Tolchin's request that the
26 reply or part of the reply be stricken and not

1 Proceedings

2 considered by the court, I'm denying that. So that
3 motion is gone.

4 So we still have the rest of the motion.

5 Now, the reason I raise the issue of the
6 audits and now you have raised something else, so I'm
7 not so certain this is a case for discovery, for a lot
8 of discovery. However, there are certain questions
9 about whether or not the Pension Fund even if, and if I
10 believe all of your documentation it's a separate
11 entity from the Palestinian Authority and from the PLO.
12 Even if I believe all of that, there are questions of
13 whether or not the Pension Fund has any money that it
14 owes to the PA or holds any money of the PA, which
15 might be an issue here, in which I think is an issue
16 here and which might require some stuff. That's the
17 only reason I raise the whole issue of the auditing and
18 the surplus. But let me hear argument on these
19 questions.

20 MR. KERR: If I may, your Honor, because I
21 think and I want to kind of posit two things. Let me
22 frame them. I think I will frame the issues and
23 respond directly.

24 THE COURT: I should say one more thing
25 before you begin your argument. I must tell you that I
26 am disturbed by the request to appoint a receiver and

1 Proceedings

2 even by the Sheriff's levy, that's something we do if
3 you really have a judgment against the entity. But
4 there are really a lot of questions. Which entity is a
5 judgment debtor at all?

6 It seems to me that you put the cart before
7 the horse here and it may open questions of in fact due
8 process.

9 MR. TOLCHIN: Can I answer that?

10 THE COURT: I just threw that out. I will
11 give you a chance to argue.

12 I am just telling you what are the concerns,
13 I have, right now.

14 MR. KERR: Your Honor.

15 THE COURT: You argue first, since you have
16 a motion to dismiss.

17 MR. KERR: That's correct, Your Honor.

18 I want to frame two issues. I think they go
19 directly to what your Honor pointed out.

20 First, the basis of our motion to dismiss.
21 We are moving to dismiss the turnover petition, which
22 is a special proceeding, because of the lack of factual
23 support that is in the petition or in the papers in
24 response to it. And that is very crucial here, your
25 Honor. Because the whole reason why that turnover
26 petition is, we believe is here, is because it

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Proceedings

perpetuates what we believe to be the prejudgement attacking of our assets.

And, if the petition -- and I think the cases we cite are clear, your Honor -- if the petition fails to be supported by the petitioner with facts and in evidentiary form, and we believe it is, the petition needs to be dismissed under Article Four. And if it is dismissed, the separate Sheriff's levy will expire of its own course.

THE COURT: I know it expires in 90 days, but that isn't my question.

My question is this: Isn't there a distinction between the Sheriff's levy and a turnover proceeding such as this? Where you have information? A subpoena, an attaching of an information subpoena. There maybe some kind of basis for a restraining order.

MR. KERR: I think that's right, your Honor, I think that theoretically it is true. That you bring a turnover petition based on facts. Those facts may or may not support a levy, but the petition they brought is not supported by the facts. As we told you, we have separately moved to vacate the Sheriff's levy in part, because it is also not supported by any facts.

The tie here, your Honor, is that at earlier argument on March 7th, Mr. Tolchin took the position

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Proceedings

that -- if you recall, that's when they had withdrawn the restraining notice that we had moved to vacate.

THE COURT: I remember.

MR. KERR: His position was that now the Sheriff's levy will continue as long as the turnover petition is outstanding, I believe, under CPLR 5232 -- yes, that's correct.

And, therefore, as long as by perpetuating this turnover petition it allows the Sheriff's levy to be perpetuated. Again, we have separately moved to vacate that. But, if the petition itself is not supported by facts and in evidentiary form, then the petition must fall. The levy will expire.

Mr. Tolchin has filed a declaratory judgment action which we now appeared in. If he wants to pursue the declaratory judgment action, take discovery as a plenary action, he can do so.

But, again, what comes back, your Honor? We have been trying for the last six months trying very hard to get someone to focus on the fact that our money has been restrained.

THE COURT: Can I just say something else.

MR. KERR: Yes.

THE COURT: It's another question. Because frankly, after I read through these papers -- I read

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Proceedings

through all the papers, it took me quiet sometime yesterday. I read through my motions before argument anyway, but I will read them again. But, I kind of agree with you.

What comes to mind is even if I dispose of all this basically on the papers, you still have the Federal Injunction. The Federal Injunction, the wording of the Federal Injunction is really a little odd to me, because it talks about related parties. I think that might have been the word, I'm not sure.

So let's say I dismiss all of this, shouldn't there still be an issue with regard to the Federal Injunction and perhaps using the Federal Injunction to restrain some of these funds?

MR. KERR: I think that's true, your Honor.

When we were here on March 7th, moving to restrain the restraining notion, Mr. Taffet, SASI's counsel, told the Court, because of the uncertainty of the Federal Injunction, even if New York restraints are not decided, the money is not going to move until we go back to Rhode Island and get Judge LaGuez to say we can move those monies.

My point, your Honor, is that I read the PNA's transcript when they went to Judge LaGuez. I know how they had responded to that. I don't want to

Proceedings

waste his time. However, I need to be able to go to him and say that the New York restraints in fact have been knocked out. And, therefore, I will go to him and say, Judge, the injunction shouldn't reach our assets. We don't hold PA money and the notice of injunction that was served by plaintiffs counsel, which I think is really causing this uncertainty, should be struck. He may or may not give me that relief, your Honor, but I can't go to him until I can say to him, we have come here and taken the New York restraints and knocked them out.

Now, Mr. Tolchin --

THE COURT: I think you're wrong on that frankly, because in the other case basically on the original PMA case, that dealt with the PMA, the Monetary Authority.

I think what I found was holding those funds was a Federal Injunction. Apparently, the reason that the PMA went down to the Federal Court and the Federal Court said, the property was in New York, that's where all these issues should be decided.

MR. KERR: I think those issues should be decided in New York, your Honor. The question is while they are being decided, there should be a New York restraint without the petitioner making the showing

Proceedings

required under Article 62 for a prejudgement.

My client was not a judgment debtor in that action. If the petitioners want to come into this court and make a motion under Article 62 for a prejudgment attachment and post a bond, if they make that, then the New York restraint will last.

But, they have not done that, your Honor. What they have done is they tried the sweep us into a restraining notice, now a Sheriff's levy under Article 62, the post judgment proceeding on this theory. That despite what we have given to the court and submit the fact they have no evidence, that we are one, the same as the PA.

So, the reason why this motion is important, is because the summary proceeding, the turnover proceeding cannot be used to do this.

The cases we cite in our papers I think are clear on this. That should be vacated, the Sheriff's levy should be either vacated or allowed to expire. The money is not going to move because of this potential application of the Federal Injunction. And, if I'm successful here, the declaratory judgment action will continue and I will do it. But, but I will take that and go to Judge LaGuez and say to Judge LaGuez, what happened is, your injunction reached the PA, it

1 Proceedings

2 should not reach my assets.

3 I will make that clear. Vacate that notice
4 of injunction. He may or may not do that, Your Honor,
5 I recognize that. But I can't go to him until I can
6 say to him that any of the restraints here in New York
7 are gone.

8 Let's me make one additional point, your
9 Honor. With respect to the Sheriff's levy that was
10 served on SASI, that Sheriff's levy is actually limited
11 to just the PA and PLO's assets.

12 SASI has said they don't hold any PA or PLO
13 assets. Therefore, under CPLR 5232, that levy was
14 ineffective as of the date it was served.

15 However, because petitioners continually make
16 these arguments that no, no, no, no, the money doesn't
17 belong to my client. Or my client is fictitious, it
18 belongs to the PA, it creates this cloud.

19 So even though I can say, and I think SASI
20 would say, the Sheriff's levy was ineffective from the
21 beginning and there is no current New York restraint,
22 I'm still stuck in this limbo land, that's why I have
23 been trying hard to get these issues presented to your
24 Honor.

25 So I can go through the particulars of our
26 motion, if you like, as to why I believe the petition

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Proceedings

does not provide an evidentiary basis. The entire petition is based on information and belief.

If you read the petition and I have, it is here, your Honor. You go through all of the allegations relating to the Pension Fund, are information and belief. That's an inadequate basis to have a turnover petition in an Article Four proceedings.

We answered the petition. One of our affirmative defenses was, it fails to state a cause of action, because of the lack of proof.

We submitted factual information to your Honor to demonstrate who we are.

In response, the petitioner submits an attorneys affidavit, by Mr. Tolchin. With all due respect to Mr. Tolchin, I don't believe he has any personal knowledge about Palestinian law, about the Pension Fund, about the funds that are being transferred.

He raised some questions about gaps. Specifically in our affidavit, our position is and you don't have to look at our evidence because his factual support alone justifies dismissal. That's why we responded to this in our reply papers. And the cases we cite, your Honor, the Izo case, the Trusto case, the

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Proceedings

Young case, and the 22 Park Avenue case, make very clear that this proceeding, which is an Article Four Proceeding, is different than a plenary proceeding and a declaratory judgment action.

In this kind of Article Four proceeding, petitioners have the burden of coming in and raising and submitting evidentiary evidence. Submitting facts in evidentiary form, so that on the return date which is today, the Court can determine whether there is, based upon what they have presented, there is a triable issue of fact. And if there is not, and I submit to you that based upon what they have submitted, they have not raised a triable issue of fact. This court is required to summarily dismiss the turnover petition. If they do that, as I said, they can continue on with the declaratory action. They can take discovery, we will answer that. We will oppose it vigorously, but when they are in a situation where they don't have any facts and frankly I think they are just kind of -- they don't have any facts. They want to try it out. That's the way they have got to do it.

Your Honor, I can address any other issues you like. If you have other questions or if there is a separate motion for discovery in the turnover proceeding. But, as I have indicated, we indicated in

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Proceedings

our papers you can't, you can't overcome your facts, your lack of evidentiary proof and support the petition by saying, I need to take discovery to now try and support that lack of proof. They had the means to do that in other ways. They could have filed additional information, subpoenas, under Article 422.

They could have served a subpoena under 5223. They have not done that for a year, your Honor. They have done none of that.

What they have to do is rest and stand upon this turnover petition, to rest and stand upon what they have submitted.

THE COURT: What I also thought was interesting, you handed over in the end the Deloitte 1999 report?

MR. KERR: That's correct.

THE COURT: Is there a more recent report?

MR. KERR: Yes. Two things, your Honor. It's technically not an audit, it's a flow of funds analyses, F L O W. I have been admonished it's not an audit, it is not done under the London auditing procedures that were done.

The reason we gave that to your Honor was because in Mr. Tolchin's reply papers.

THE COURT: You gave it to Mr. Tolchin?

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Proceedings

MR. KERR: I did. Mr. Tolchin said he was shocked. There is no way of establishing the funds that came up from Israel that in fact ended up in Credit Suisse.

In 1999, the Fund retained Deloitte & Touche. In that analysis, that's the report that we submitted that Mr. A. Franji, the Director General of the Pension Fund submitted with his supplemental affidavit. What I believe has been done every year since that time, is at least through, I think, 2004.

Is that Deloitte & Touche has done an analysis of moneys that were in Credit Suisse, what they have earned. And I don't have them in front of me, your Honor.

The reason we gave you the '99 report was that was the first one that traced the money originally that was transferred by Israel in 1994, there are several investment advisers, ending up in Credit Suisse asset management.

THE COURT: The question I have with the Deloitte flow fund, does it show any monies you paid out to these employees or any money coming in from the PA or from the municipal governments?

MR. KERR: It does not. The reason why not, your Honor, is that the money that was put in Credit

1 Proceedings

2 Suisse has remained at Credit Suisse, except for a
3 payment I believe back in in '97.

4 THE COURT: You're saying none of those
5 moneys have gone to Credit Suisse, these are the monies
6 from Israel?

7 MR. KERR: These monies from Israel, they
8 have all gone to Credit Suisse.

9 Other than a payment in '97, this had not
10 been used to pay beneficiaries, instead of the Pension
11 Fund, because it has been discontinued.

12 To get payments, both withdrawal from
13 employees and payments from the municipalities and the
14 like, they maybe taken as assets in the Gaza that's
15 being used to pay beneficiaries on a regular basis.
16 This money is kind of like the trust, they kept as
17 their corpus, to ultimately use to pay that off and to
18 invest. But none of this money and I believe in the
19 affidavit we submitted, state that none of that money
20 has been used to pay out the beneficiaries to today.

21 I believe, I believe that the Deloitte and
22 Touche analysis to the extent they were done and they
23 were relatively short, after the one we showed to you,
24 shows the case.

25 THE COURT: Let me hear from Mr. Taffet, you
26 want to say something.

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Proceedings

MR. TAFFET: We have not moved to dismiss, and the turnover proceeding though is on information and belief.

THE COURT: I know that.

MR. TAFFET: And he wants discovery to be extensive discovery in connection with that proceeding. That's what we moved, that's why we imposed the declaratory judgment action.

Now the issue is about to be joined, service had been made. So discovery can proceed at long last, I guess in that separate proceeding.

THE COURT: Okay. Mr. Tolchin.

MR. TOLCHIN: Thank you, your Honor.

I'm going to begin with the issue your Honor raised about whether serving the Sheriff's levy or asking for a receiver to be appointed would be a due process violation. One may bring a turnover proceeding against someone claimed to be an alter ego of the judgment debtor. I didn't cite those cases in my brief here. Those cases were cited in the Palestinian Monetary Authority papers.

THE COURT: What proof is there of that, other than the name?

MR. TOLCHIN: That's the function of the proceeding. I will come to that, but this is

1 Proceedings

2 procedurally, just procedurally, one need not as Mr.
3 Kerr has been arguing strenuously, one need not sue the
4 alleged alter ego go through the whole discovery
5 process, watch as the assets are transferred off shore
6 to Gaza and dissipated and disappeared and then get a
7 judgment before one can pursue the assets.

8 THE COURT: I have two questions for you.

9 Number one, even if the turnover was
10 dismissed, you still have a Federal Injunction,
11 wouldn't that be holding the funds?

12 MR. TOLCHIN: It would be, obviously. The
13 important thing is that SASI regards it as holding the
14 funds they did.

15 THE COURT: In a sense the turnover is
16 putting a third or fourth lock on the funds.

17 MR. TOLCHIN: Not the turnover, your Honor,
18 the turnover proceeding puts no lock on the funds.

19 THE COURT: I'm sorry, the restraining order
20 or the Sheriff's levy.

21 MR. TOLCHIN: The Sheriff's levy.

22 THE COURT: It seems to me you're asking for
23 a turnover, when there is actually no proof at all.

24 MR. TOLCHIN: That's not true.

25 THE COURT: That shows that these funds
26 belong to the judgment creditors.

1 Proceedings

2 MR. TOLCHIN: Judge, let me start, since you
3 want to talk from that direction. Let's take a look at
4 Exhibit Q in my papers. I made an extra copy, because
5 of the way it is folded. You may not be able to see
6 the very top of the page.

7 May I hand it up?

8 THE COURT: Yes. Q like Queens.

9 MR. TOLCHIN: This is a letter from Mohamed
10 Rachid to an investment manager who was managing the
11 Palestinian Pension Fund monies in 1997.

12 Mohamed Rachid is writing as the economic
13 advisor to President Yasser Arafat, who is President
14 Yasser Arafat. If we look at the top of the paper it
15 says Palestinian Liberation Organization and Palestine
16 National Authority. Yasser Arafat was president of the
17 National Authority and is well known to be the chairman
18 of the PLO.

19 This is a letter plainly instructing the
20 manager of these Pension Funds how to handle the money.
21 What to sell, what to buy and who to transfer it to.

22 THE COURT: Is this Credit Suisse that we
23 are talking about?

24 MR. TOLCHIN: This is Belesta Asset
25 Management.

26 THE COURT: Which is not in the United

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Proceedings

States?

MR. TOLCHIN: Correct. This is in 1997, this is an asset manager who was managing these Pension Funds. They have a predecessor.

THE COURT: The letter goes on to say, "we would like you to deposit the proceeds of the sale in the PPF account with Credit Suisse."

MR. TOLCHIN: Exactly. If you look up in the first paragraph, it's very interesting. It doesn't say that I'm writing to you about the funds belonging to the Pension Fund.

THE COURT: But it says "the handling of funds in the name of the Palestinian Pension Fund of State Administrative Employees", which seems to be the same.

MR. TOLCHIN: It's not, it's not, because when somebody is engaging in a what we call a corporate shell game to put assets in different names to avoid judgment creditors as the Palestinians have done repeatedly, especially during the days of Yasser Arafat. They opened up accounts under all sort of names. But the fact that the person controlling this money doesn't even pretend he is writing on insurance on a Pension Fund letterhead, or Palestinian Fund letterhead, he is writing the letter as economic

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Proceedings

adviser to the chairman of our judgment debtor, saying this is what you should do with the money. He is controlling this money. And if this document was obtained from Credit Suisse --

THE COURT: Is that what it shows?

MR. TOLCHIN: From Citigroup, I'm sorry.

THE COURT: It shows back in 1997 while Yasser Arafat was the president of the PLO, and perhaps the chair of, I'm not sure of the PA.

MR. TOLCHIN: He was the president of the PA and the chair of the PLO.

THE COURT: I inverted it.

He had some control over the Palestinian Pension Fund, which may or may not.

MR. TOLCHIN: Assets titled to in an account under the name of the Palestinian.

THE COURT: The Palestinian Pension Fund and that the money go into another Palestinian Pension Fund. He may have had some control in 1997.

MR. TOLCHIN: Because the Funds are alleged to have originated in the same period.

THE COURT: No.

MR. TOLCHIN: They presented an audit from '99. Mr. Kerr just told your Honor, these funds were transferred from Israel.

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Proceedings

THE COURT: '99, before.

MR. KERR: It was transferred in two parts. One, the end of '94, Israel put it in an account, in an east west town of Tel Aviv. A portion was transferred to Morgan Stanley to be managed in, I believe, in late '96 or early '97. The remaining money was in an East West Bank, were transferred from there to Credit Suisse Private Banking in Switzerland.

MR. TOLCHIN: What we have pieced together.

First of all, judge, there is no wear to be found in any of these papers, not the papers produced by Mr. Kerr, not the papers produced by Citigroup, nowhere. There is nothing along the lines of a certificate of incorporation or any other such document for the Palestinian Pension Fund for the State Administrative Employees of the Gaza Strip. Nobody has produced anything like that.

Now, who would have that if it exists, judge? Not me. SASI would have it, why? Because the law requires them to maintain it. They have to obtain and obtain and maintain documents, showing who has signature authority on the account. Who pays taxes on the accounts, the entity. That the documents showing the formation of the entity that creates the account.

If I wanted to open up a bank account in the

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Proceedings

name of the law office of Robert Tolchin, I have to come to the bank with a business certificate. SASI has to have this documentation. That's what we are proposing to get during discovery.

Mr. Kerr has provided to your Honor and I see from your Honor's questions that you have read it carefully. The statute that creates the insurance and Pension Fund, issued in 1964 under Egyptian law, with all these provisions and rules and all these regulations clearly, judge, where is the document that shows that the insurance and Pension Fund is the Palestinian Pension Fund for State Administrative Employees in the Gaza Strip?

I didn't see any such document. I see an affidavit. The reply affidavit that I wanted to strike where the affiant, we don't know who he is.

THE COURT: There are two affiants.

MR. TOLCHIN: A-Franji.

THE COURT: There are two different affiants.

MR. TOLCHIN: I'm talking about Mr. A-Franji. He says he is in charge of the pension fund and he says that all these different Pension Funds under different names are actually the same thing.

He has not produced one document showing that

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Proceedings

there is a bank account or an account that SASI has, saying Insurance and Pension Fund, also known as or doing business as.

THE COURT: I have a question for you.

MR. TOLCHIN: Yes.

THE COURT: What about the Deloitte, what is it called?

MR. KERR: The Flow of Funds.

THE COURT: The Flow of Funds, which shows that the money that Israel collected, I think it was a pension fund and for employees, went to Credit Suisse and eventually is what we are talking about here.

I guess they were under a mis-impression too.

MR. TOLCHIN: Let's talk about that too. The documents as it stands is completely inadmissible.

What is it, it is somebody who signed here unsworn, saying that he reviewed some documents, which aren't here and he made some conclusions. And among his conclusions is that \$28 million dollars is missing.

It was transferred from the Palestinian Pension Fund account that he audited to three banks located in the Palestinian territories. We know them well from the other case, judge. The Arab Bank, the Gaza Bank, Monod, in Paris.

THE COURT: That's a new one.

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Proceedings

MR. TOLCHIN: Yes, that is a new one.

There is a third one. There were three transfers totaling \$28 million to these banks, which they say we don't even know -- I'm sorry, Your honor, I stand corrected. It was two banks, Arab Bank and Bank Monod, totalling \$28 million dollars. Where they say they have not been able to locate any documents showing where that money went.

THE COURT: This was when? During the time of Yasser Arafat?

MR. TOLCHIN: As of their audit.

THE COURT: Yes.

MR. TOLCHIN: As of their audit. So what we see is the PA's president is controlling the money. In 1997 according to that letter, we see an audit showing a very substantial amount of money was just transferred out. We don't know where that was transferred. If that was transferred into a Palestinian Authority account --

THE COURT: Or in Mr. Arafat's pocket.

MR. TOLCHIN: -- for Mr. Arafat's pocket, that would be a significant thing to do.

THE COURT: It just may mean there was a larceny here of some sort.

MR. TOLCHIN: Or, it may to be the notion,

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Proceedings

never mind what they called the account.

You have to admit if you were running a municipal government, which Yasser Arafat was, you wanted to hide some money, don't put it in your own name, create a benign thing called a Pension Fund.

Where is the pension plan documents for the Palestinian Pension Fund, for the State Administrative Employees?

THE COURT: Is there evidence that connects the moving parties.

MR. TOLCHIN: Not one page, not one of piece of evidence. I challenge you to show it to me. There is nothing hear that says that the insurance and pension fund created in 1964 is the Palestinian, for State Administrative Employees of the Gaza Strip. The only thing that comes close to saying it, beside Mr. Kerr's statement, without citation is the reply affidavit of Mr. A-Franji. Who says that only because we pointed out that it was absent and he doesn't annex one document, there are what is the most formal place where somebody would be really careful to make sure to get all their documents correct.

Here are some examples when Mr. Kerr's partner, Mr. Tannenbaum, was given power of attorney to act on behalf of the Palestinian Pension Fund. It's

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Proceedings

here in the papers, Exhibit F, power of attorney issued to James Tannenbaum.

THE COURT: This? It was struck.

MR. TOLCHIN: In 2002. It's issued by the Palestinian Pension Fund to the State Administrative Employees of the Gaza Strip. It doesn't say the Insurance and Pension Fund also known as. There is no resolutions, Judge, authorizing Mohamed Rachid for example to act.

This is Exhibit D to my papers. No, it's Exhibit I to my papers. This is appointing Mohamed Rachid to act on behalf of whom? The Palestinian Pension Fund of the State administrative Employees.

It doesn't say Insurance and Pension Fund created under the 1964 law. It doesn't say anything of the sort. In fact, if you read on it says Mohamed Rachid can act how? Together with the Yasser Arafat. Mohamed Rachid and Yasser Arafat can sign away the whole farm, or the other members of the board of directors all together can do it.

But with all that, Yasser Arafat was in a special controlling position with respect to this fund.

It doesn't say anything about the Insurance and Pension Fund. We see this over and over again.

Exhibit J is another certificate of board

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Proceedings

resolutions of the Palestinian Pension Fund. This was authorizing the transfer of \$25 million from an account maintained in the name of the Pension Fund with Credit Suisse to something called the Carthage Consortium. Again, no mention again to the Insurance and Pension Fund.

Exhibit K is the same thing. Again another certificate of the board resolution. Also no mention of the Pension Fund.

You would thing, Judge, that when people are sitting down with a lawyer, and by the way, if you look at the format all the documents prepared by Mr. Tannenbaum have a similar code in the corner. It seems to be the file name on his computer.

It appears that Mr. Tannenbaum actually prepared these documents. We know, Judge, from experience that when lawyers at large firms prepare documents involving millions of dollars, they are usually careful to make sure they get the name of the corporation right, when they are issuing a board resolution of that corporation.

Again, this is Exhibit L when he hired Smith Barney as an investment adviser. It wasn't the Insurance Pension Fund, it was something else.

THE COURT: It was who?

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Proceedings

MR. TOLCHIN: The Palestinian Pension Fund for State Administrative Employees.

THE COURT: Did all these documents refer to the Pension Fund for to the Palestinian Fund or something?

MR. TOLCHIN: They all referred to something called the Palestinian Fund for State Administrative Employees of the Gaza Strip. Not one refers to the Insurance Fund created under that 1964 law, which plain as day says the name of the entity is Insurance and Pension Fund.

THE COURT: What did Israel refer to it as when they referred it?

MR. TOLCHIN: The Oslow Accord, saying that money will be transferred to the PA or to an entity to be created.

THE COURT: I'm not talking about that. I'm talking about when Israel in fact collected money for the Pension Fund and they transferred it, who did they transfer it to, what was the name?

MR. TOLCHIN: I would love for the pension fund to produce the document, because they have to have it. Israel issued a check or wire transfer, they must have where it was.

THE COURT: What do the Deloitte Flow Funds

1 Proceedings

2 say?

3 MR. TOLCHIN: The Deloitte Flow Funds say --
4 let me find it here.

5 That the funds -- it doesn't start at that
6 point, judge. It starts with December 94. Funds
7 deposited with Yaru Trade, Tel Aviv, \$430 million
8 Shekels. It says what name was on the check, who
9 transfers them. It doesn't say the account number at
10 the bank or whose name was on that account.

11 THE COURT: Does that document at all refer
12 to any entity known as a "Pension Fund"?

13 MR. TOLCHIN: It says at the top Palestinian
14 Pension Fund Investment. There is no indication that
15 anybody prepared this document -- I withdraw that.

16 The cover letter conveying the document is
17 addressed to the Palestinian Pension Fund for State
18 Administrative Employees in Gaza, does not say
19 Insurance and Pension Fund, there is -- I have been
20 trying --

21 THE COURT: I understand your point.

22 MR. TOLCHIN: -- to do that. That's why I
23 bristled, when I heard Mr. Kerr say and your Honor
24 asked questions about the notion that there is no
25 evidence that there is a connection between the
26 Palestinian Authority and these moneys. To the

1 Proceedings

2 contrary, the only evidence that there is, is that
3 Israel agreed to give some money to the PA or whatever
4 account the PA would set up. The PA thereafter
5 controlled this money, a substantial amount.

6 THE COURT: But where did Israel get the
7 money, the Pension Fund money?

8 MR. TOLCHIN: Israel paid the state
9 administrative employees, the West Bank and Gaza Strip,
10 Israel paid the monies out of a line of items, from its
11 budget.

12 THE COURT: The money?

13 MR. TOLCHIN: From Israel's pocket.

14 When Israel gave over control, of the
15 administrative control of the West Bank and Gaza.

16 THE COURT: And the money was intended as
17 pension money?

18 MR. TOLCHIN: There was no fund of money
19 that Israel had segregated. Israel paid the workers a
20 salary, when they retired, Israel paid them a pension.

21 THE COURT: That's what I'm saying, the
22 money was transferred as a pension device?

23 MR. TOLCHIN: No, the money was transferred
24 to the PA and the PA agreed to take over the pension
25 obligation. But that doesn't mean that it was a
26 separate -- to use the touch stone word, it doesn't

1 Proceedings

2 mean that it was a separate entity, it not an Erisa
3 claim. Just because something is for a pension doesn't
4 mean that it's impervious to judgment creditor.
5 Certain teachers or pension plans are, that's why O.J.
6 Simpson can still have some money.

7 THE COURT: Is this anything else you want
8 to add?

9 MR. TOLCHIN: Yes. All of this was in the
10 way of answering your question.

11 I have to talk about the procedure, Judge.
12 Procedurally this is -- all what's going on here is
13 topsy turby.

14 Mr. Kerr used the word repeatedly. He is
15 asking your Honor to summarily dismiss this case. Now,
16 what does it mean summarily dismiss?

17 There is such a thing as a motion to dismiss.

18 There is such a thing as a motion for summary
19 judgment. There is no such thing as summary dismissal.

20 THE COURT: I assume he meant, he said
21 summarily, as a summary proceeding.

22 MR. KERR: Just so we are clear, your Honor,
23 what I'm asking the court to do is what the court can
24 do under 409 B. I'll read, at this time the court
25 shall make a summary determination upon the pleadings,
26 papers and admissions to the extent that no triable

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Proceedings

issues of fact are raised.

Our position is, there are no triable issues of fact that are raised. The court should make a summary determination and dismiss the petition. The cases that I cited to your Honor did exactly that.

MR. TOLCHIN: Your Honor, this is not a summary proceeding, that's something from the Real Property Actions and Proceedings Law, that's for L and T Court.

This is a special proceeding, governed by Article Four of the CPLR. Article Four of the CPLR allows the main respondent to move to dismiss if the pleading fail to set forth the cases as a matter of law. It doesn't contemplate a summary judgment motion.

The CPLR also says that somebody else who claims a right to the funds at issue, may move to intervene. They did that.

On intervention, according to CPLR 5225, it says, the court may permit an adverse claimant to intervene. And on intervention, they have to follow the procedure contained in 5239.

5239 says that they have to prove an affirmative case that the money is there is.

They are not -- picture this judge. The Pension Fund is moving to dismiss a claim that I have

1 Proceedings

2 asserted against SASI. I have not asserted a claim
3 against the Pension Fund.

4 THE COURT: It's the Pension Funds money.

5 MR. TOLCHIN: I have asserted against SASI,
6 the stake holder. The CPLR is very wise here. If
7 somebody else claims the money they have to come into
8 court and affirmatively prove that it is theirs.

9 Any interested person may commence a special
10 proceeding against the judgment creditor, other person
11 with whom the dispute exists to determine rights of the
12 property. They have to come forward. They can't just
13 stand there and say that the Unger case against SASI is
14 weak, that's not good enough. That's not what the kind
15 of motion to dismiss, that they are allowed to make if
16 they wanted to come in and say our pleading doesn't set
17 forth the cause of action, because we forgot to plead
18 A, B, C, D as a matter of law. That's a motion they
19 could make.

20 But, what they have done, Judge, they have
21 come in here with factual arguments. There is no
22 mistaking, they put in affidavits, they submit
23 documents. Their arguments are entirely factual. As I
24 pointed out in my papers, their first point heading in
25 their brief says, because the evidence in the record
26 conclusively refutes the petitioners allegations, there

1 Proceedings

2 are no triable issues of fact.

3 They are arguing by their own words, a
4 summary judgment standard. A summary judgment is not
5 something that is permitted for a turnover proceeding.
6 Even if it were summary judgment, talking about triable
7 issues of fact, is inappropriate.

8 Before we get onto the facts on the table,
9 they have all the bank statements.

10 THE COURT: I understand what the procedural
11 argument is. What is your next statement; is there
12 anything else?

13 MR. TOLCHIN: I want to talk about discovery
14 issue.

15 Mr. Kerr says, that we have could pursued
16 discovery under the judgment itself. Supplemental of
17 information subpoena, even depositions and the like
18 before commencing the turnover proceeding.

19 He says, we have tied up his money for a
20 year. That's bogus, Judge. We served an information
21 subpoena last April. We got back an answer from SASI,
22 I think it was May or June of last year, they said they
23 are holding three stocks, a very minuscule position,
24 not anything worth pursuing.

25 THE COURT: You pursued it?

26 MR. TOLCHIN: No, we did not. We did

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Proceedings

nothing. In December we suddenly, out of the blue, we never had any dialog with them. Out of the blue we got a supplemental answer to that same original information subpoena. All of a sudden, there is \$100 million dollars worth of stocks. That they say, we have been advised that these belongs to the Pension Fund.

Clearly, how is it possible they didn't know who a hundred million dollars worth of assets belonged to all along?

The same day as we got that supplemental answer, we got a motion to vacate the restraining notice from the Pension Fund. Thus, it's plain that the pension fund and SASI, were coordinating. Because it's uncanny that both things came out of the blue on the same day.

So we went from being utterly unaware that there are a hundred million dollars there, because they didn't give us a truthful or complete answer to the information subpoena in the first instance. To all of a sudden facing a motion to vacate the restraint. And we have no choice at that point but to file a turnover proceeding to protect ourselves procedurally.

Had they given us a full answer when we served our information subpoena a year ago, absolutely, we would have served the same documents, demands, that

1 Proceedings

2 they are asking for now.

3 Saying, give us the account opening
4 statements, show us who has signature authority?

5 Show us the corporate records?

6 Show us the monthly statements?

7 Show us who the control persons were on this
8 account?

9 Show us the correspondence about this
10 account, we would have served that a year ago. But
11 they kept it hidden from us that these assets existed,
12 which is something I would love frankly to explore with
13 SASI.

14 THE COURT: What about your declaratory
15 judgment action?

16 MR. TOLCHIN: The declaratory judgment
17 action is slightly different from the turnover
18 proceeding. In the declaratory judgment action the
19 Insurance and Pension Fund by that name is a party.

20 THE COURT: Can't you get discovery there?

21 MR. TOLCHIN: We can get discovery there,
22 yes, we are entitled to it.

23 THE COURT: I'm just saying, I don't
24 understand.

25 MR. TOLCHIN: Yes, we are entitled to
26 discovery in the declaratory judgment action and we are

1 Proceedings

2 entitled to discovery under the judgment. So there is
3 two places.

4 THE COURT: I'm just saying, you can get the
5 discovery under the declaratory judgment action, you
6 always could.

7 MR. TOLCHIN: Not always could. Just now
8 you can't do discovery in an action until the issue is
9 joined.

10 THE COURT: But that's not what I meant, but
11 yes.

12 MR. TOLCHIN: That's why we have not served
13 any subpoenas or notices because we have been
14 procedurally in a holding pattern here.

15 THE COURT: Anything else?

16 MR. TOLCHIN: Is there anything else?

17 Yes. What we need, what we can't do and why
18 we moved for discovery is the timing of it all. In
19 other words, we need that discovery which we are
20 entitled to, but we need it in order to fully present
21 this turnover proceeding.

22 THE COURT: Is there anything else?

23 MR. TOLCHIN: I think that's it, your Honor.

24 THE COURT: I'm just going to issue my
25 decision right on the record. I think it is easier to
26 do so.

1 Proceedings

2 We have heard full argument and my decision
3 is based upon the arguments that were presented, as
4 well as the papers.

5 I have three motions in front of me.

6 One is a motion to dismiss a turnover
7 proceeding.

8 A second is the request of the
9 plaintiffs/petitioners, Mr. Tolchin's clients, to
10 appoint a receiver so the assets could be taken by the
11 receiver and sold.

12 The third is for discovery.

13 Reading through all these papers, it seems to
14 me that the petitioner in the turnover proceeding had
15 commenced a turnover proceeding based purely on
16 information and belief there was absolutely nothing at
17 all to support their allegations that the Pension Fund
18 is something other than a Pension Fund for the
19 employees.

20 In response to the motion to dismiss, there
21 is credible, very credible affidavits and evidence
22 indicating that this in fact is money that belonged to
23 the employees of, and now of the different
24 municipalities and governments of the Palestinian
25 Authority.

26 On its face, it totally indicates, clearly

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Proceedings

indicates I must say, and I think if anything proves, it clearly proves based upon these documents that in fact there is no basis for the turnover proceeding.

I'm going to grant the motion to dismiss.

I must say that I do not believe that there is going to be any harm caused to Mr. Tolchin's clients by granting the dismissal of a turnover proceeding and denying the appointment of a receiver, for several reasons.

One, because there is still the Federal Injunction. They funds are going nowhere. These funds are being held here by the Federal Injunction. We don't need multiple proceeding holding these funds. In fact, there is also a declaratory judgment action which is going to go forward and there will be discovery under that, as much discovery as Mr. Tolchin and his clients require.

MR. TOLCHIN: Your Honor, the Palestinian Pension Fund.

THE COURT: Please, let me finish.

So under the declaratory judgment action there will be discovery under the injunction. I believe there should be discovery and eventually some sort of hearing to determine whether or not the Pension Fund is in some way is not a separate political entity

1 Proceedings

2 and whether the Pension Fund in some way may hold any
3 funds that belong to the judgment debtors.

4 I am therefore going to deny the discovery
5 under the turnover proceeding as moot, because I'm
6 going to dismiss the turnover proceeding.

7 There are no restraining orders pursuant,
8 right now, pursuant to this turnover proceeding holding
9 these funds. However, as I have noted earlier there is
10 still a Sheriff's levy and there certainly is a Federal
11 Injunction, which is still outstanding holding these
12 funds.

13 There is discovery which will go forward
14 pursuant to the declaratory judgment action. And, of
15 course, Mr. Tolchin you have an exception and you have
16 a record from which to appeal.

17 MR. TOLCHIN: May I ask that the order
18 dictated today be stayed for a period of time to allow
19 us to seek a stay in the Appellate Division?

20 THE COURT: Counsel?

21 MR. KERR: Your Honor, I would oppose that
22 for the very reason your Honor just said on the record.
23 I don't see any real need for having us chase up to the
24 Appellate Division. So I think that is completely
25 unnecessary. As your Honor indicated in light of the
26 Federal Injunction, the funds aren't going anywhere.

1 Proceedings

2 The declaratory judgement will proceed.

3 Your Honor, if I just may make one point.

4 Your Honor dismissed the turnover petition.

5 The Sheriff's levy which was served on February 21st,
6 under 5232, will therefore expire in 90 days, which I
7 believe is the 22nd?

8 THE COURT: Yes, I believe it does expire in
9 nintey days.

10 MR. KERR: Yes.

11 THE COURT: So it is still in effect, but it
12 will expire at some point.

13 MR. KERR: That's correct.

14 THE COURT: That's the Decision and Order of
15 the Court.

16 I will just write on the gray sheet saying
17 that my decision has been rendered and my order is on
18 the record.

19 MR. KERR: Thank you, your Honor.

20 (Discussion off the record.)

21 (The discussion off the record
22 concluded and the following occurred in
23 open court:)

24 THE COURT: On the record.

25 I want the discovery under the DJ action to
26 begin as quickly as possible. I want this to go

1 Proceedings

2 quickly. I would also like new discovery to be
3 obtained.

4 In terms of the DJ action, so that we can
5 hold a hearing even on the injunction. I think it's
6 important that this be dealt with as quickly as
7 possible.

8 MR. TOLCHIN: Your Honor, just to clarify.

9 If I understand your Honor's reasoning about
10 the turnover proceeding being dismissed, it's not with
11 prejudice, meaning the DJ action generates a whole
12 bunch of new information and discovery and new facts.

13 THE COURT: Those facts can be used in your
14 Federal Injunction hearings. Because you have got the
15 Federal Injunction holding these funds. It seems to me
16 at this point there was absolutely no evidence at all,
17 nothing, which should have given rise to this turnover
18 proceeding, particularly in light of the fact that you
19 have a Federal Injunction which might, which under
20 Federal Injunction, you may have residual response.

21 MR. TOLCHIN: But we may later need another
22 turnover proceeding to get the funds.

23 THE COURT: That may happen once you have
24 some evidence to show it's a valid turnover proceeding.

25 MR. TOLCHIN: So this is without prejudice
26 to us commencing a turnover proceeding later.

1 Proceedings

2 THE COURT: If there is new evidence.

3 MR. TOLCHIN: If it's warranted.

4 THE COURT: If it's warranted.

5 MR. KERR: Your Honor, with respect to the
6 declaratory judgment action, so we are clear on the
7 timing. We will follow the judge's admonition and
8 begin discovery right away.

9 As I indicated, we will made a protective
10 motion to dismiss the creditor judgment, which is now
11 moot. We will withdraw that motion.

12 We will answer the declaratory judgment
13 action. I think we can do that in a week, if not
14 sooner and we will be off to the races. I just want to
15 be clear on our timing.

16 THE COURT: Yes. There has not been a P C
17 conference, a preliminary conference on the declaratory
18 judgment action. Once you answer, I would like someone
19 to notify my clerk so that you can come in for a P C,
20 but there is nothing to stop you from starting
21 discovery before the P C, once there is an answer.

22 MR. TOLCHIN: I can say this. My discovery
23 demand both to SASI and to the Pension Fund in the
24 declaratory judgment action is exactly what was
25 attached to my motion for discovery here. So we could
26 deem it served and start or I could print it out again

1 Proceedings

2 and serve it.

3 THE COURT: Just to be careful, once they
4 answer, just print it out and serve it.

5 MR. TOLCHIN: Can we set a date for the
6 answer?

7 MR. KERR: As I said, your Honor, today is
8 the 18th, we can serve our answer by Friday the
9 26th.

10 THE COURT: Fine.

11 MR. TAFFET: We will agree to accept
12 service. And in the declaratory judgment action, we
13 are not a party.

14 MR. TOLCHIN: Understood.

15 MR. TAFFET: You can serve our law firm on
16 behalf of SASI. On other discovery, we are not
17 authorized to receive.

18 MR. KERR: Thank you, your Honor.

19 * * *

20 C E R T I F I C A T E

21 I, Lester Isaacs, an official court reporter
22 of the State of New York, do hereby certify that the
23 foregoing is a true and accurate transcript of my
24 stenographic notes.

25 
26 Lester Isaacs, S.C.R.
Official Court Reporter.